IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1966 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

A M NAIK, MANAGING DIRECTOR & CHIEF EXECUTIVE OFFICER

Versus

PARESHBHAI KANTILAL DESAI

Appearance:

MR ND NANAVATY for SINGHI & BUCH ASSO. for Petitioner

MR JC GOHIL for Respondent No. 1

DELETED for Respondent No. 2

MR HL JANI Learned APP for Respondent No. 5

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 20/02/2001

ORAL JUDGEMENT

Heard Mr. N.D.Nanavati for M/s. Singhi and Buch Associate on behalf of petitioner, Mr. J.C.Gohil learned advocate for respondent no.1 and Mr. H.L.Jani learned APP

for respondent no.5 - State.

2. The petitioner has prayed to quash and set aside the criminal complaint bearing no. 2602 of 1999 filed by respondent no.1 against the present petitioner in the Court of learned Metropolitan Magistrate, Ahmedabad, Court No.5.

3. The certified copy of the impugned complaint, copy of which is produced at Annexure-I, suggests the fact that present respondent no.1 has filed complaint against one Mr. D.H.Patel, Managing Director of L & T Co. Ltd.(present petitioner), Local Stock and Share Pvt. Ltd of Bangalore and one M/s. Gupta Ajay and Company at Bangalore for the offences made punishable under Sections 380, 467, 468, 470 and 420 read with Section 114 of the Indian Penal Code.

It is averred and alleged in the complaint that respondent no.1 used to purchase the shares and has purchased the shares of L & T Co. Ltd. from one share broker M/s. Pravin Ratilal Share and Broker as per the detailed enumerated in para.2. That in order to get the said shares transferred, complainant has dispatched the same to the said Company - M/s. L & T Co. Ltd. on 28.2.1999 through General Post-office. It is alleged by the petitioner that normally the shares send for transfer returned to the parties within two months. However, as he did not receive the shares for more than three months, he wrote letters by simple post as well as RPAD. Ultimately, the petitioner received the reply vide letter dated 15.7.1999 and 6.10.1999 respectively from which the petitioner came to know that disputed shares are already transferred to one Mr. D.H.Patel who had attended the office in person on 12.3.1999. The respondent no.1 has averred and alleged in the complaint that transfer of the said shares is made only within 13 days, which is a suspicious transaction and he prima facie felt that accused nos. 1, 3 and 4 might have entered into a conspiracy with the petitionr to create false documents after the theft of the shares from postal department to get the same transferred. On the said allegations, the respondent no.1 as the complainant of complaint has impleaded present petitioner in the capacity of Managing Director as accused no.2.

It appears from the record that the Trial Court after recording verification of the complainant has issued summons against all the accused under Sections 380, 467, 468, 470, 420 and 114 of the Indian Penal Code.

4. Mr. N.D.Nanavati learned advocate has contended that petitioner has not been impleaded by name in the complaint, but has been impleaded by designation and that the Managing Director of a Company is not involved in day to day affairs of the Company, much less, in respect to administrative work of transfer of shares etc. Furthermore, the averments made in the complaint does not disclose any overt and/or covert act on the part of the present petitioner as accused no.2 of the said complaint to involve him in the alleged offences as alleged in the complaint made against accused nos. 1,3 and 4.

5. On scrutiny of the complaint and the facts stated hereinabove, it appears that respondent no.1 has impleaded present petitioner as accused no.2 of the said complaint only on assumption that without the collusion of any person in Company, the said shares could not have been transferred within 13 days in the name of accused no.1 - Mr. D.H.Patel.

6. Mr. Gohil learned advocate for the respondent no.1 urged that factum of transfer of shares within shortest period of 13 days suggest the circumstances of the involvement of some officer of respondent no.2.

That the circumstance urged by learned advocate for respondent no.1 could not be said to be sufficient ground to implicate any person as accused of the offences as alleged in the complaint. In the said view of the matter, in my opinion, the complaint does not disclose any offence qua accused no.2 (present petitioner) and as such, deserves to be quashed and set aside.

7. On the basis of foregoing discussion, the impugned complaint being Criminal Case No. 2602 of 1999 along with impugned order passed thereon issuing summons against the accused for the offences stated therein is hereby quashed and set aside qua accused no.2 (present petitioner) only. Rule to that extent is made absolute with no order as to costs.

(A.K.Trivedi,J.)
(vipul)